

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0672**

Roger Francis Miller, et al.,  
Appellants,

vs.

Baytown Township, a Minnesota Municipal Corporation,  
Respondent,

Derrick Custom Homes, LLC,  
Respondent.

**Filed February 6, 2023  
Affirmed  
Cochran, Judge**

Washington County District Court  
File No. 82-CV-21-3331

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Considered and decided by Reilly, Presiding Judge; Worke, Judge; and  
Cochran, Judge.

## NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellants challenge the district court's grant of summary judgment upholding respondent-township's issuance of a conditional use permit (CUP) for a new housing development to be located near appellants' residences. On appeal, they argue that the township's grant of the CUP was unreasonable, arbitrary, and capricious because (1) the township misapplied its zoning ordinance and (2) the township's findings in the resolution approving the CUP lack substantial evidentiary support. We affirm.

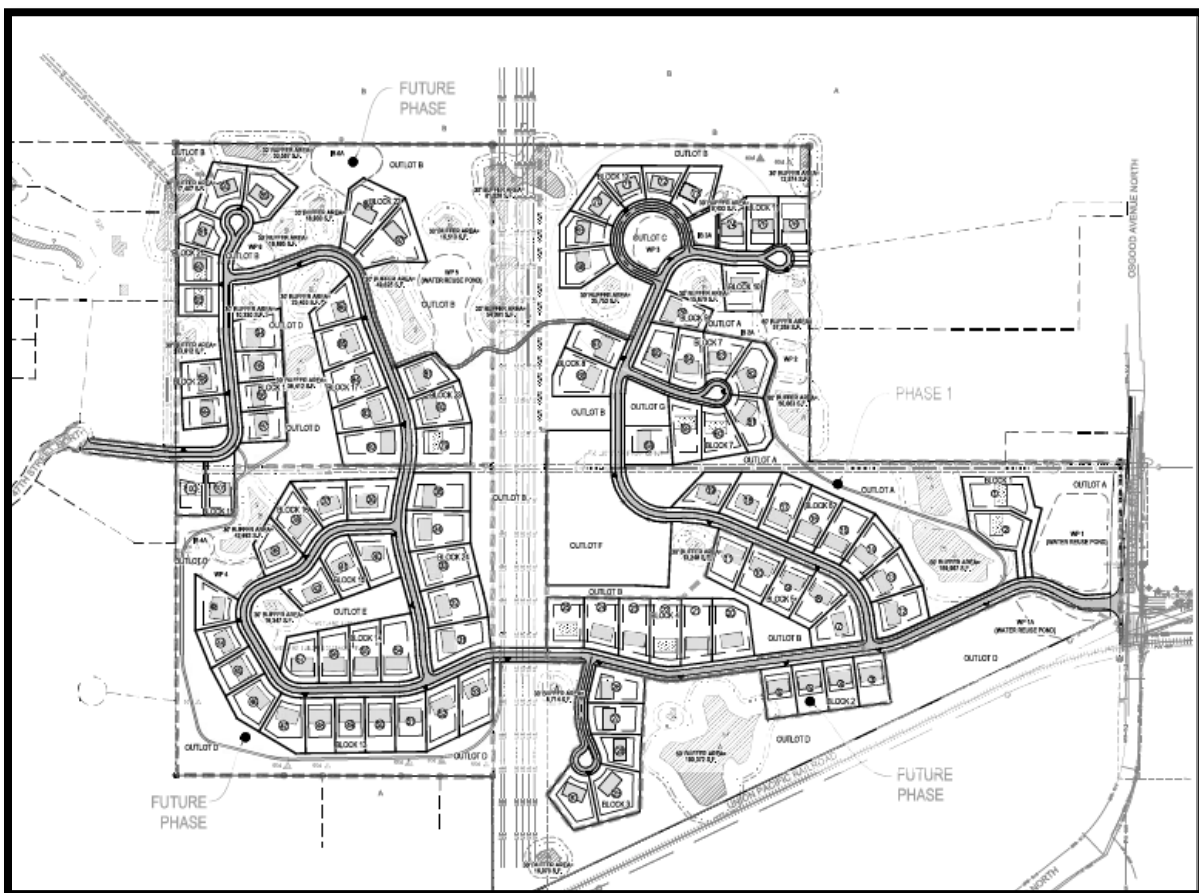
### FACTS

In December 2020, respondent Derrick Custom Homes LLC applied to respondent Baytown Township for a CUP to build 101 homes on a 195-acre parcel as an "open space development" (OSD). An OSD is "[a] grouping of residential structures on smaller lots than allowed in the specific zoning district, leaving some land dedicated as open space." Baytown Township, Minn., Zoning Ordinance (BTZO) ch. 2, pt. 3, § 4.2(8).<sup>1</sup> As proposed, the development will consist of lots ranging from approximately 0.5 to 1.0 acre but over 50% of the 195-acre parcel will remain as open space. A CUP is required for the development because the 195-acre parcel is in an area zoned for "single family estates" with a minimum lot size of 2.5 acres. *See* BTZO ch.2, pt. 2, § 2.2(1)(A)(D) (establishing lot size for single family estates).

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<sup>1</sup> We cite to the version of the ordinance from 2018 in effect at the time of the township's CUP decision, published on the township's website.

The development (black-and-white plat shown below) will be bounded by a wildlife-management area to the north, Osgood Avenue to the east, a railway to the south, and a neighborhood of single-family estates known as Pauley Estates to the west. It will have two access roads—one to the east connecting directly to Osgood Avenue, and one to the west connecting to Northbrook Boulevard through Pauley Estates via 47th Street North, which currently is a dead-end cul-de-sac but was platted as a right-of-way to connect to a future road. The right-of-way on 47th Street has not been abandoned. Appellants Roger Miller, et al., are residents of Pauley Estates who oppose the development primarily because of concerns about increased traffic through their neighborhood on 47th Street and the associated impacts.



In January 2021, the township's planning commission conducted a public hearing, receiving and considering public comments about various aspects of the proposed development, including concerns about traffic along 47th Street. The planning commission recommended that the town board approve the CUP, subject to conditions, including that Derrick provide (1) "estimates of average daily traffic (ADT) generated by the proposed development" and (2) "design options to address concerns of traffic on the west side of the proposed development traveling onto 47th Street."

As directed, Derrick provided to the board a study on the anticipated traffic impacts of the proposed development. The study posed three design options for 47th Street: (1) the original proposal for standard two-way traffic (like the access road toward Osgood Avenue), (2) partial one-way access, and (3) emergency access only. In evaluating the options, the study estimated that 47th Street currently sees 142 trips per day. The study also estimated that the development will generate 953 total trips per day but anticipated an even split of the 953 new trips between Osgood Avenue and 47th Street, largely because the development is split into two nearly equal parts by a utility easement. As a result, the study estimated that traffic on 47th Street would increase to a total of 619 trips under the two-way option, 380 trips under the one-way option, and not at all under the emergency-access scenario. The study also noted that the Metropolitan Council estimates that typical daily volume on a local road like 47th Street is up to 1,000 daily trips and the Minnesota Department of Transportation (MnDOT) uses an estimate of 700 daily trips. Because even the proposed two-way option yields traffic volume below those numbers (at

619 daily trips), the study opined that the estimated volumes for 47th Street are “within acceptable levels for a local street.”

In response, appellants submitted a separate traffic study. Their study estimated that the development would add 1,049 new trips per day. In addressing the distribution of that new traffic, the study focused primarily on traffic controls at the access points on Osgood Avenue and Northbrook Boulevard (via 47th Street). The study noted that the Osgood Avenue access point will be controlled by a traffic light (to be installed with the development), whereas the Northbrook Boulevard-47th Street access point has only a stop sign controlling traffic from 47th Street onto Northbrook Boulevard. The study opined that there will be delays at the Osgood Avenue access point, which will lead to “trip diversion” and an unequal distribution of development-associated traffic—65% (682 trips) along 47th Street and 35% (367 trips) at Osgood Avenue. The study noted that 47th Street currently sees very little traffic because it is a cul-de-sac and opined that the addition of 682 new trips per day “is a significant change and will adversely impact the quality of life in Pauley Estates.” The study did not address Metropolitan Council, MnDOT, or other industry markers for typical traffic volumes on comparable roads.

The town planner and town engineer also evaluated the traffic issue. They estimated that the development would add a total of 950 trips per day, with traffic being split roughly evenly between the two access points, with the result that the intersection at Northbrook Boulevard and 47th Street would see a total of around 615 trips per day. They recognized that this level of traffic would be an increase but explained that the new traffic level “would not be different” from other intersections located in the township and that 47th Street “was

built to be able to handle such an increase in traffic.” They also noted that a development with 75 homes—the number that could be built on the 195-acre parcel if it were developed as zoned for single family estates—would generate more than 700 new daily trips to be split between the two access points.

The board solicited further input on the traffic issue from the local fire department. In correspondence with the fire chief, the board outlined the three options that Derrick had identified for 47th Street traffic and noted that “neighbors along 47th Street” asked for the emergency-only option with an unpaved, lightly plowed right-of-way that “looks like a trail” and has a “post-and-chain traffic barrier.” The fire chief responded that it is necessary for 47th Avenue to be a two-way street, fully plowed and maintained, to afford ambulances and fire vehicles access to the development. He also stated that an emergency-only option that satisfied those requirements would be “okay” with the fire department, provided the emergency restriction was limited to signage, without physical obstructions on the road, such as chains or posts.

To receive public input, the board conducted four public hearings and invited written comments. Traffic along 47th Street was a recurring item of discussion, among other topics. The board also received input from real estate professionals regarding the impact that the proposed development could have on property values of nearby homes. At the last public hearing, the board approved the CUP in a resolution. The resolution included numerous findings on a range of topics underlying the decision.

Appellants thereafter initiated this action in district court seeking declaratory and injunctive relief to reverse the CUP approval. The township and appellants filed

cross-motions for summary judgment. After joining Derrick as a party and reviewing the stipulated record of the township proceedings, the district court granted summary judgment in favor of the township and dismissed appellants' claims. This appeal follows.

## DECISION

On appeal from a district court's review of a municipality's zoning decision, we review the zoning decision independent of the district court's findings and conclusions. *Roselawn Cemetery v. City of Roseville*, 689 N.W.2d 254, 258 (Minn. App. 2004). A municipality has broad discretion to approve or deny a CUP. *BECA of Alexandria, L.L.P. v. County of Douglas ex rel. Bd. of Comm'rs*, 607 N.W.2d 459, 463 (Minn. App. 2000). Accordingly, we exercise deference in reviewing a CUP decision, particularly when it is an approval. *Big Lake Ass'n v. St. Louis Cnty. Plan. Comm'n*, 761 N.W.2d 487, 491 (Minn. 2009). We will not disturb the decision unless the municipality acted unreasonably, arbitrarily, or capriciously. *Schwardt v. County of Watonwan*, 656 N.W.2d 383, 386 (Minn. 2003); *see also Big Lake Ass'n*, 761 N.W.2d at 491 (requiring judicial restraint except in "rare cases where there is no rational basis for the [zoning] decision").

In determining whether a decision is unreasonable, arbitrary, or capricious, we conduct a two-step analysis. *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75 (Minn. 2015). We first consider whether the reasons given for the decision are "legally sufficient." *Id.* at 75-76. If so, we then determine whether the reasons have a factual basis in the record. *Id.* at 76.

Appellants argue that the township's decision to approve the CUP is arbitrary, capricious, and unreasonable for two reasons. First, they contend that the township failed to comply with its own ordinance when approving the CUP. Second, they argue that the record does not support certain findings that the township relied on in the resolution approving the CUP. We address each argument in turn.

**I. The township's reasons for approving the CUP comport with the zoning ordinance.**

"Whether a local zoning body's decision is reasonable is measured against the standards set forth in the applicable ordinance." *In re Stadsvold*, 754 N.W.2d 323, 332 (Minn. 2008). A CUP decision is unreasonable if it does not meet those standards. *Schwardt*, 656 N.W.2d at 387. The interpretation and construction of a zoning ordinance presents a question of law that we review de novo based on the plain language of the ordinance. *Clear Channel Outdoor Advert., Inc. v. City of St. Paul*, 675 N.W.2d 343, 346 (Minn. App. 2004), *rev. denied* (Minn. May 18, 2004).

The zoning ordinance at issue allows for an OSD in an area zoned for single-family estates if the township approves a CUP for the development. BTZO ch. 2, part. 3, § 4.3. The township follows a two-step process when reviewing an application for a CUP for an OSD. *Id.* § 4.4(5)(B). The township's planning commission conducts the first step, holding a public hearing and reviewing the application. *Id.* The planning commission "may recommend" granting a CUP "provided" three conditions are satisfied: "[1] the proposed use is listed as a conditional use for the district and [2] upon a showing that the standards and criteria stated in this Zoning Ordinance will be satisfied and [3] that the use



is in harmony with the general purposes and intent of this Zoning Ordinance and the Comprehensive Plan.” BTZO ch. 1, § 7.3(1); *see* BTZO ch. 2, pt. 3, § 4.4(3) (requiring use of these criteria for reviewing a CUP for an OSD). In assessing this third condition, the planning commission “shall consider” nine subfactors, including, in relevant part:

(A) The impact of the proposed use on the health, safety and general welfare of the occupants of the surrounding lands.

(B) Existing and anticipated traffic conditions, including parking facilities on adjacent streets and lands.

....

(D) The effect of the proposed use on property values and scenic views in the surrounding area.

(E) The effect of the proposed use on the Comprehensive Plan.

BTZO ch. 1, § 7.3(1).

“Upon receipt of the planning [c]ommission recommendation or after 60 days of the public hearing, if no recommendation has been received,” the town board reviews the CUP application and makes a final decision. BTZO ch. 1, § 7.4, ch. 2, pt. 3, § 4.4(5)(B). In doing so, the board considers the planning commission’s recommendation (if any) and comments from agencies and the public. BTZO ch. 2, part 3, § 4.4(5)(B). “A decision on the [CUP] shall include findings of fact.” BTZO ch. 1, § 7.4.

Appellants argue that the township erred in its application of the zoning ordinance because the township’s findings regarding traffic did not include findings on traffic conditions on adjacent streets and lands, specifically Pauley Estates. This argument is unavailing for multiple reasons.

First, appellants overstate the ordinance’s requirement for findings. The ordinance requires the township to “consider” traffic (and eight other subfactors) in evaluating the three criteria for CUP approval. BTZO ch. 1, § 7.3(1). It also requires the township to “include findings of fact” in its decision. *Id.* § 7.4. But it does not require the township to make findings of fact about each of the nine subfactors. Accepting appellants’ argument would require adding words to the ordinance, which we will not do. *See County of Dakota v. Cameron*, 839 N.W.2d 700, 709 (Minn. 2013) (stating that courts cannot “add words or phrases to an unambiguous statute”). Moreover, Minnesota Supreme Court precedent does not require specific findings on each factor that the township considers. Rather, the township need only “articulate the reasons for its ultimate decision” with sufficient specificity for a reviewing court to determine whether it applied the relevant provisions of its zoning ordinance. *Stadsvold*, 754 N.W.2d at 332 (quotation omitted).

Second, appellants mischaracterize the township’s obligation to consider traffic impacts when reviewing a CUP application. They contend that the township was required to evaluate “[e]xisting and anticipated traffic conditions . . . on adjacent streets and lands,” meaning specifically effects on traffic in Pauley Estates. But they omit several words from the relevant section of the ordinance. Stated in full, the ordinance requires consideration of “[e]xisting and anticipated traffic conditions, *including parking facilities* on adjacent streets and lands.” BTZO ch. 1, § 7.3(1)(B) (emphasis added.) Viewing all of these words together, the ordinance plainly requires a comprehensive evaluation of traffic conditions as they currently exist and as they could be “anticipated” by virtue of the proposed development, “including”—meaning with particular but nonexclusive focus on—parking

facilities near the proposed development. *See Douglas v. Stillwater Area Pub. Schs.*, 899 N.W.2d 546, 554 (Minn. App. 2017) (“Minnesota appellate courts have consistently held that ‘including’ indicates a nonexclusive list.”). By omitting the phrase “including parking facilities on,” appellants change the ordinance’s meaning and overstate the township’s obligation to consider traffic in nearby areas.

Finally, the record confirms that the township carefully considered traffic, both within the proposed development and in nearby areas. It held a total of five public hearings—one before the planning commission and four before the town board. Indeed, it extended its timeline for reviewing the CUP application and held more public hearings than required under its ordinance, largely to enable further evaluation of the traffic issue. The township also considered significant written input from the public, both positive and negative, with traffic concerns as a frequent focus. And it solicited input from the local fire department regarding emergency access issues. The township also considered traffic analyses from Derrick, appellants, and its staff. It weighed multiple options for managing traffic associated with the development, including the possibility of a second Osgood Avenue access point and traffic calming options not only within the development but also at the connection of 47th Street to the development. In doing so, the township accounted for the interests of all its current and anticipated residents, not only those who live along 47th Street but also future residents of the development and those who reside along and traverse Osgood Avenue. And its paragraph of written findings regarding traffic (none of which appellants challenge as inaccurate) fairly summarize its consideration of the issue.

In sum, the zoning ordinance required the township to consider the anticipated effect of the development on traffic within the development itself and surrounding areas, and the record reflects that the township amply fulfilled this legal obligation.

## **II. The township’s findings have substantial evidentiary support.**

Having discerned no error by the township in its application of its zoning ordinance, we next consider appellants’ argument that the CUP is invalid because certain findings in the resolution approving the CUP are not supported by sufficient evidence. When reviewing the evidentiary support for a municipality’s CUP decision, we do not “weigh the evidence.” *RDNT*, 861 N.W.2d at 76 (quotation omitted). We consider only “whether the evidence could reasonably support or justify the determination.” *Stadsvold*, 754 N.W.2d at 332 (quotation omitted). And we defer to the municipality’s “judgment on conflicting evidence.” *RDNT*, 861 N.W.2d at 76. A finding is not invalid simply because another decisionmaker might have resolved an evidentiary conflict differently. *See Nolan v. City of Eden Prairie*, 610 N.W.2d 697, 701 (Minn. App. 2000), *rev. denied* (Minn. July 25, 2000).

Appellants challenge three of the township’s factual findings: (1) the development “would not negatively impact the health, safety, or general welfare of those on surrounding lands”; (2) “there is no evidence that the proposed OSD would negatively impact property values of surrounding areas”; and (3) the development “would not have any negative effect, or be out of line with the Comprehensive Plan.” These findings address three of the nine subfactors that the township must consider when determining “whether the proposed

[conditional] use is in harmony with the general purpose and intent of this Zoning Ordinance and the Comprehensive Plan.” BTZO ch. 1, § 7.3(1). We address each in turn.

*Health, Safety, and General Welfare*

Appellants contend that the record does not support the township’s finding of no negative impact to health, safety, and general welfare from the proposed development. In support of their argument, they note that the record reflects that the development will lead to increased traffic along 47th Street. They emphasize that the current level of traffic along 47th Street where they reside is very low and they do not want that to change. But that “neighborhood opposition” does not justify, let alone mandate, denial of the CUP. *Trisko v. City of Waite Park*, 566 N.W.2d 349, 355 (Minn. App. 1997), *rev. denied* (Minn. Sept. 25, 1997). Nor does the mere fact of a traffic increase necessarily mean that health, safety, and general welfare will suffer. To the contrary, the record also contains undisputed evidence that even if a disproportionate amount of the development-related traffic uses 47th Street, the resulting traffic flow will still be within a range that both the Metropolitan Council and MnDOT consider typical for that type of road. Similarly, it is undisputed that 47th Street is platted to connect to the 195-acre parcel and that parcel could be developed with 75 single-family estates without a CUP if the proposed OSD is not built, which means that increased traffic along 47th Street is a predictable and reasonable change, not a deviation from the township’s health and safety standards. Accordingly, respondents have failed to demonstrate that the record does not support the township’s finding that the development will not impair health, safety, and general welfare.

### *Property Values*

As with their argument regarding health, safety, and welfare, appellants look to increased traffic along 47th Street in disputing the finding regarding impacts on nearby property values. Specifically, appellants dispute the township's finding that "there is no evidence that the proposed OSD would negatively impact property values of surrounding areas." Appellants contend that there is conflicting evidence, *not* "no evidence," that the traffic change will damage property values. Appellants are correct—and the township does not dispute—that there is conflicting evidence on this issue. The record reflects that two real-estate professionals opined that increased traffic along 47th Street would negatively affect the property values in that area, while a third opined that the "high end luxury homes"<sup>2</sup> in the proposed development would enhance the value of nearby properties. The third professional further opined that the traffic change would not damage the value of nearby properties because buyers would have no knowledge or expectation of prior unusually low traffic levels.

While we agree with appellants that the township did misstate the record when it made the "no evidence" finding, we disagree that the finding is error fatal to the CUP approval. We reach this conclusion for several reasons. First, under the township's ordinance, the impacts on surrounding property values is a subfactor, similar to the traffic subfactor, that informs the township's determination whether the proposed development is in harmony with the zoning ordinance and comprehensive plan. BTZO ch. 1, § 7.3(1)(D).

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<sup>2</sup> Two estimates place the expected value of the homes in the development at between \$600,000 and \$1,000,000.

But it is not determinative of whether the board may issue a CUP. *Id.* Second, the record confirms that the township duly considered this subfactor and had a sound evidentiary basis for not finding that the development would impair property values. Third, our deferential standard of review does not require reversal for a misstatement of the evidence in the township's findings but rather requires an assessment of whether there is a "rational basis for the decision," with particular deference where the decision is a CUP approval. *Big Lake Ass'n*, 761 N.W.2d at 491. In light of these considerations, we conclude that appellants have not demonstrated that the "no evidence" finding rendered the CUP approval unreasonable, arbitrary, or capricious.

#### *Comprehensive Plan*

Finally, appellants challenge the finding in the board's resolution that the development "would not have any negative effect, or be out of line with the Comprehensive Plan." They principally emphasize that the comprehensive plan calls for preserving the township's "rural" and "residential" character with "low-density single family residential development," and contend that the development undermines those goals. In doing so, they overlook that the comprehensive plan expressly recognizes that OSDs play a role in serving those goals. Specifically, the comprehensive plan notes that the township has previously approved OSDs and that OSDs are part of the township's "future land use plan." In fact, one of its five land-use goals is to "[p]ermit options for permitting flexibility in subdivision design, including lot averaging and [OSDs]." Further, the comprehensive plan reflects a preference for OSDs with "significant ecological or wildlife habitat value" because they are more likely to receive support from the Minnesota Land Trust. Because

it is undisputed that the proposed OSD will protect ten acres of wetlands and that over 50% of the proposed 195-acre development will be open space, the development is particularly consistent with the comprehensive plan.

Appellants also contend that approving a development for 101 homes is inconsistent with the comprehensive plan's estimation that the township will see the addition of only 90 households by 2040. But as the comprehensive plan expressly recognizes, that figure is merely an estimate. The township has discretion in making zoning decisions based on that estimate, *see BECA of Alexandria*, 607 N.W.2d at 463, and its discretion reasonably encompasses approving a development that accommodates a slightly higher increase in new households. As such, appellants have not demonstrated a lack of evidentiary support for the finding that the development is not "out of line" with the comprehensive plan.

In sum, appellants have failed to demonstrate that the township's grant of the CUP was arbitrary, capricious, or unreasonable. We therefore affirm the decision of the district court upholding the issuance of the CUP.

**Affirmed.**